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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,402	10/03/2003	Keith Alan Miesel	009.6001 (P-11290.00)	1006
29906 7590 06/13/2008 INGRASSIA FISHER & LORENZ, P.C. 7010 E. COCHISE ROAD SCOTTSDALE, AZ 85253				
EXAMINER				
ALTER, ALYSSA M				
ART UNIT		PAPER NUMBER		
3762				
NOTIFICATION DATE		DELIVERY MODE		
06/13/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@ifllaw.com

Office Action Summary

Application No.

10/678,402

Applicant(s)

MIESEL ET AL.

Examiner

ALYSSA M. ALTER

Art Unit

3762

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-10 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claim 25 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Inventions I (claims 1 and 4-10) and II (claim 25) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have different modes of operation. Invention I requires the employment of leads while Invention II does not require a leaded system but could communicate solely by wireless transmission.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 25 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such

claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Response to Arguments

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection under *Stypulkowski* (US 7,286,878 B2).

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 6 and 8-10 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Stypulkowski* (US 7,286,878 B2). *Stypulkowski* discloses an electrode array extension with an IPG 220 connected to an extension unit (EU) 226 as seen in figure 2. The examiner considers the IPG 220 to be the central control module and the EU 226 to be the satellite module. *Stypulkowski*

discloses that the switches can be controlled by a "source external to the body" (col. 4, lines 51) which means there is inherently wireless communication with an external programmer. Additionally, Stypulkowski discloses that "the structure and the operation of IPGs is known to those skilled in the art"(col. 3, lines 15-16). Therefore, the IPG employed in the system would inherently have a power source and a wireless receiver to communicate with an external programmer.

As seen in figure 3 the EU or satellite module, contains switches 310-312 which the examiner considers to be the switching module, a communication circuit 322 which the examiner considers the communication module, the controller 320 which the examiner considers the processor, a plurality of second leads 314-319 and a power source 326.

Furthermore, "controller 320 may include hardware or software to recognize programming signals and for programming wave shaping circuits 306-308 and/or switches 310-312" (col. 5, lines 4-7). Therefore, since the controller 320 contains hardware/software it contains memory to store the software.

As to addition components, Stypulkowski is silent about the satellite module containing a sense amp and A/D converter. However, the system includes biomedical sensors which would necessarily include a sense amp and A/D converter. In addition, since the "wave shaping circuits 306-308 may be implemented with a variety of electrical components including potentiometers and integrated circuits" (col. 4, lines 34-36), the system would necessarily contain a sense amp and a A/D converter.

In the alternative, although the examiner considers Stypulkowski to disclose a sense amp and a A/D converter above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a sense amp and an A/D converter since such a modification would provide the predictable result of amplifying a signal and converting the signal between analog and digital format in order to store enhance the analysis and storage of the signals. Furthermore, it is well known in the art to employ sense amps and A/D converts when recording and/or transmitting signals to the body.

2. Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stypulkowski (US 7,286,878 B2). Stypulkowski discloses the claimed invention except for the wireless transmission of power. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the power source as taught by Stypulkowski since such a modification would provide the predictable results of enabling the removal of the battery and thus reduce the components, size and weight of the satellite module. Furthermore, removing the battery would reduce the cost and eliminate the need to explant the when the battery is drained.

As to claim 7, Stypulkowski discloses the claimed invention except for the logic block and buffer system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the switching module and memory to include a logic block and buffer, in order to provide the predictable results of enhanced signal transmission.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALYSSA M. ALTER whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Alyssa M Alter/
Examiner
Art Unit 3762